

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Media Bureau Seeks Additional Comment on
UHF Discount in Light of Recent Legislation
Affecting National Television Ownership Cap

MB Docket No. 02-277

To: The Commission

COMMENTS OF SINCLAIR BROADCAST GROUP, INC.

Sinclair Broadcast Group, Inc. ("Sinclair"), by its attorneys, hereby submits its comments in response to the Media Bureau's public notice seeking additional comment on the continued use of the Commission's UHF discount in light of the Consolidated Appropriations Act, ("CAA"),¹ affecting the national television ownership cap.² For nearly 20 years, the UHF discount has been a fundamental factor in assessing a broadcast entity's national audience reach. Congress was well aware of this methodology in establishing the 39% national television ownership limit and, in fact, carefully crafted the new limit to avoid the requirement that certain parties divest existing broadcast interests. Any action by the Commission to change or eliminate the discount would effectively defeat the political compromise reached in the CAA. Moreover, UHF stations continue to suffer a competitive disadvantage against VHF stations, and thus, the discount is fully warranted. For these reasons, the Commission should continue to use the UHF discount in assessing an entity's national audience reach.

¹ Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004)

² See Public Notice, DA 04-320 (February 19, 2004); see also Public Notice, DA 04-575 (February 27, 2004). Sinclair offers these comments because of its wealth of experience with UHF stations, not out of any concern that its own national audience reach, which is approximately 14% with the UHF discount and 24% otherwise, could exceed the new national ownership cap.

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Discussion

In 1985, the Commission implemented a methodology for calculating an entity's national television audience reach for purposes of ownership limitations.³ Under that methodology, the Commission counts 50% of the television households in a UHF station's market toward the licensee's national ownership cap.⁴

Congress was aware of this requirement in enacting the *CAA*. In 1996, when Congress raised the ownership cap from 25% to 35%, it expressly approved the use of the UHF discount.⁵ Additionally, in enacting the *CAA*, Congress specifically used the term "national audience reach," which is expressly defined under the Commission rules to include the UHF discount.⁶ The legislative history for the *CAA* also indicates that the 39% ownership limit, as calculated with the UHF discount, was carefully selected to avoid the requirement of having certain parties divest existing broadcast interests.⁷ Any change to the UHF discount policy would essentially permit the Commission to circumvent that precise numerical limit.⁸

³ See *Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations*, 57 RR 2d 966, at ¶¶ 42-44 (1985).

⁴ See *id.* at ¶ 44; see also 47 C.F.R. § 73.3555(d)(2)(i).

⁵ See H.R. No. 104-204 at 118 ("This 'UHF discount' appropriately reflects the technical and economic handicaps applicable to UHF facilities and the Committee does not envision that the UHF discount calculation will be modified so as to impede the objectives of this section.").

⁶ See, e.g., *Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 534 U.S. 184, 193-94 (2002) ("Congress' repetition of a well-established term generally implies that Congress intended the term to be construed in accordance with pre-existing regulatory interpretations.").

⁷ See 150 Cong. Rec. S18 (daily ed. Jan. 20, 2004) (statement of Sen. Kohl); 150 Cong. Rec. S78 (daily ed. Jan. 21, 2004) (statement of Sen. Byrd); 150 Cong. Rec. S83 (daily ed. Jan. 21, 2004) (statement of Sen. Durbin); 150 Cong. Rec. S86 (daily ed. Jan. 21, 2004) (statement of Sen. McCain).

⁸ For example, the Commission could effectively raise the ownership cap by permitting all stations, other than the highest-ranked station in a market, to receive a discount.

Moreover, as the Commission has explained, the discount is appropriate because UHF stations are competitively disadvantaged by weaker over-the-air signals relative to VHF stations.⁹ To illustrate this point, Sinclair has performed an analysis of CBS primetime household shares in several markets in which CBS programming moved from a VHF station to a UHF station.¹⁰ See Attachment A hereto. For nearly all of these markets, the transition occurred in November 1994 after Fox Inc. and New World Communications Group Inc. came to an agreement involving switching the network affiliation of several VHF stations from CBS to Fox, leaving CBS to become affiliated with UHF stations in each market.¹¹ In one market, Jacksonville, Florida, the transition occurred in November 2002 after Post-Newsweek decided not to renew its CBS affiliation for its VHF station and CBS became affiliated with Clear Channel's UHF station in the market.

The data demonstrates that in each market the CBS household primetime share fell drastically when the programming was moved to a UHF station. In Cleveland, the household share initially fell 65%. In the majority of the other markets, the initial decline of the shares ranged between 35% and 47%. In the Tampa and Jacksonville markets, the shares declined 7% and 22%, respectively. The most recent sweep data indicates that the household primetime shares continue to remain lower than the shares when the CBS programming was being

⁹ See, e.g., *In the Matter of 2002 Biennial Regulatory Review*, 18 FCC Rcd 13620, ¶¶ 585-91 (2003) ("2002 Biennial Review"), appeal pending *sub nom.*, *Prometheus Radio Project, et al. v. FCC*, Nos. 03-3388 *et al.* (3d Cir.). VHF signals typically reach between 72 and 76 miles, while UHF signals reach only approximately 44 miles. *Id.* at ¶ 586. UHF stations also require between 1.5 to 3 times greater electricity costs to operate than VHF stations. *Id.* at ¶ 588.

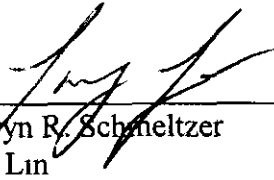
¹⁰ The analysis is based on Nielsen Media Research data.

¹¹ These markets include Detroit, Michigan; Atlanta, Georgia; Cleveland, Ohio; Tampa, Florida; and Milwaukee, Wisconsin. See, e.g., "Fox hits CBS hard with 8 VHF affiliation changes," *Communications Daily* (May 24, 1994). The transition in the Cleveland market occurred in May 1994.

transmitted on VHF stations. In four of the six markets, the difference ranged from 37% to 49%, and in the Tampa and Jacksonville markets the difference was 14% and 19%, respectively.

Accordingly, for these reasons, the Commission should continue to use the UHF discount in assessing an entity's national audience reach.

Respectfully submitted,



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March 19, 2004

ATTACHMENT A

DETROIT

<u>Sweep</u>	<u>Station/Affiliation</u>	<u>Household Share</u>
Nov-94	WJBK/CBS	19.9
Feb-95	WGPR/CBS	11.7
May-95	WGPR/CBS	10.4
Nov-95	WWJ/CBS	10.9
Nov-03	WWJ/CBS	10.5

%Chng Feb-95 Vs Nov-94	-41%
%Chng Nov-95 Vs Nov-94	-45%
%Chng Nov-94 Vs Nov-03	-47%

ATLANTA

<u>Sweep</u>	<u>Station/Affiliation</u>	<u>Household Share</u>
Nov-94	WAGA/CBS	20.4
Feb-95	WGNX/CBS	13.2
May-95	WGNX/CBS	11.3
Nov-95	WGNX/CBS	11.5
Nov-03	WGCL/CBS	10.5

%Chng Feb-95 Vs Nov-94	-35%
%Chng Nov-95 Vs Nov-94	-44%
%Chng Nov-94 Vs Nov-03	-49%

CLEVELAND

<u>Sweep</u>	<u>Station/Affiliation</u>	<u>Household Share</u>
May-94	WJW/CBS	19.3
Nov-94	WOIO/CBS	6.8
Feb-95	WOIO/CBS	15.3
May-95	WOIO/CBS	15.2
May-03	WOIO/CBS	12.2

%Chng Nov-94 Vs May-94	-65%
%Chng May-95 Vs May-94	-21%
%Chng May-94 Vs May-03	-37%

TAMPA

<u>Sweep</u>	<u>Station/Affiliation</u>	<u>Household Share</u>
Nov-94	WTVT/CBS	20.5
Feb-95	WTSP/CBS	19.1
May-95	WTSP/CBS	17.8
Nov-95	WTSP/CBS	17.3
Nov-03	WTSP/CBS	17.6

%Chng Feb-95 Vs Nov-94	-7%
%Chng Nov-95 Vs Nov-94	-16%
%Chng Nov-94 Vs Nov-03	-14%

MILWAUKEE

<u>Sweep</u>	<u>Station/Affiliation</u>	<u>Household Share</u>
Nov-94	WITI/CBS	19.5
Feb-95	WDJT/CBS	10.4
May-95	WDJT/CBS	10.2
Nov-95	WDJT/CBS	9.2
Nov-03	WDJT/CBS	11.5

%Chng Feb-95 Vs Nov-94	-47%
%Chng Nov-95 Vs Nov-94	-53%
%Chng Nov-94 Vs Nov-03	-41%

JACKSONVILLE

<u>Sweep</u>	<u>Station/Affiliation</u>	<u>Household Share</u>
May02	WJXT/CBS	17.9
Nov02	WTEV/CBS	13.9
Feb03	WTEV/CBS	14.3
May03	WTEV/CBS	14.8
Nov03	WTEV/CBS	14.5

%Chng Nov-02 Vs May-02	-22%
%Chng May-03 Vs May-02	-17%
%Chng May-02 Vs Nov-03	-19%

CERTIFICATE OF SERVICE

I, Joan Taylor, a secretary with the law firm Shaw Pittman, hereby certify that a true and correct copy of the foregoing "Comments of Sinclair Broadcast Group, Inc." was sent by hand delivery, this 19th day of March 2004, to the following:

Honorable Michael K. Powell, Chairman
Federal Communications Commission
445 Twelfth Street, S.W., Room 8-B201
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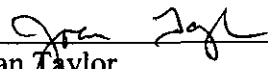
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